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RHMFISS/HOMELAND SECURITY CENTER WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY
RUEADRO/HQ ICE DRO WASHINGTON DC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RHEFHL/DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY
RUEAORC/US CUSTOMS AND BORDER PROTECTION WASHINGTON DC PRIORITY
RHMFISS/FBI WASHINGTON DC PRIORITY
RUCPDO/USDOC WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEAIIA/CIA WASHINGTON DC PRIORITY
RUEKJCS/DOD WASHDC PRIORITY

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STATE FOR EEB/ESC/TFS (LINDA RECHT)

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KCRM, KJUS, KHLS, EUN
SUBJECT: TERRORISM FINANCE: EU ON TAMIL FOUNDATION (U.S.
DOMESTIC DESIGNATION)

REF: STATE 14033

Classified By: USEU Econ Minister-Counselor Peter H. Chase for reasons
1.4 (b), (d), (e).

¶1. (C//NF) A contact close to the EU's autonomous terrorist designations process expressed doubt that the EU will to join the U.S. in autonomously designating the Tamil Foundation (Ref A). However, the EU would consider this request within the same context as the prior USG request for EU designation of the Tamils Rehabilitation Organization (TRO), which remains under consideration.

¶2. (C//NF) Several contacts, including Sri Lanka's own mission to the EU, have signaled that EU misgivings over GOSL operations in the war against the LTTE may work against the necessary political consensus to move forward on LTTE front company organizations. TRO's charitable status remains another strong hurdle, with deep EU Member State divisions over how to treat charities in the fight against terrorist financing. The EU is also wary about designating individuals or entities solely on the basis of a U.S. request. Concerns range from questions about U.S. due process for designated individuals to whether a U.S. designation under the Executive Orders, as opposed to legislation, is sufficient to count as a decision by a "competent authority" as defined by EU designation law.

¶3. (C//NF) For example, a Council Secretariat legal service contact noted that the EU autonomous designations must be made on the basis of a decision by a competent authority. Common Position 2001/931/CFSP Article 1.4 defines this as a decision by a judicial or equivalent competent authority, deciding to investigate, prosecute, or convict the designees. Contact noted that the further we move from the strict definition of competent authority by Article 1.4, the greater the risk that an EU court would examine whether such authorities' decisions can be used as the basis for designation. The EU court has not, to date, tested whether the U.S. executive orders or FTO designations are acceptable as competent authorities.

¶4. (C) COMMENT: As the arguments noted above indicate, the

EU is increasingly leery about implementing U.S. autonomous designations, especially given recent EU case law about due process. To address these concerns, we recommend USEU be authorized to provide detailed information regarding U.S. implementation of our June 18, 2007 joint commitment with the EU to "make publicly available" clear procedures for considering delisting requests. Further, we should incorporate certain standard phrases extracted from our implementation of the 2007 joint U.S.-EU statement on "Fair and Clear Procedures in Targeted Sanctions to Combat Terrorist Financing" into our designation notification demarches. Both steps will help assuage certain EU decision-makers' concerns over adopting U.S. autonomous designations. END COMMENT.

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